

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ACTUS, LLC,

Plaintiff,

v.

BANK OF AMERICA CORP., et al.

Defendants.

CIVIL ACTION NO. 2:09-cv-102-TJW

JURY TRIAL DEMANDED

**PLAINTIFF’S ANSWER TO DEFENDANT
DISNEY GIFT CARD SERVICES’ COUNTERCLAIMS**

Plaintiff Actus, LLC (“Actus”) hereby responds to each paragraph of Defendant Disney Gift Card Services, Inc.’s (“DGCS”) counterclaims as follows, wherein each and every paragraph is hereby incorporated by reference into each and every answer to each and every Count:

COUNTERCLAIMS

PARTIES

1. Admitted.
2. Admitted.

JURISDICTION AND VENUE

3. Admitted.
4. Admitted.

**FIRST COUNTERCLAIM
(Declaratory Judgment of Noninfringement of U.S. Patent No. 7,249,099)**

5. Actus restates and incorporates by reference each of its responses to the allegations in paragraphs 1 – 4 of DGCS’s Counterclaims above, as if fully set forth herein.

6. Actus admits that in its complaint, it alleges that DGCS infringes the '099 patent. Actus denies the remainder of the allegations in paragraph 6 of DGCS's Counterclaims.

7. Actus admits that an actual and justiciable controversy exists between Actus and DGCS. Actus denies all allegations not expressly admitted.

SECOND COUNTERCLAIM
(Declaratory Judgment of Noninfringement of U.S. Patent No. 7,328,189)

8. Actus restates and incorporates by reference each of its responses to the allegations in paragraphs 1 – 7 of DGCS's Counterclaims above, as if fully set forth herein.

9. Actus admits that in its complaint, it alleges that DGCS infringes the '189 patent. Actus denies the remainder of the allegations in paragraph 9 of DGCS's Counterclaims.

10. Actus admits that an actual and justiciable controversy exists between Actus and DGCS. Actus denies all allegations not expressly admitted.

THIRD COUNTERCLAIM
(Declaratory Judgment of Noninfringement of U.S. Patent No. 7,177,838)

11. Actus restates and incorporates by reference each of its responses to the allegations of paragraphs 1 - 10 of DGCS's Counterclaims above, as if fully set forth herein.

12. Actus admits that in its complaint, it alleges that DGCS infringes the '838 patent. Actus denies the remainder of the allegations in paragraph 12 of DGCS's Counterclaims.

13. Actus admits that an actual and justiciable controversy exists between Actus and DGCS. Actus denies all allegations not expressly admitted.

FOURTH COUNTERCLAIM
(Declaratory Judgment of Invalidity of U.S. Patent No. 7,249,099)

14. Actus restates and incorporates by reference each of its responses to the allegations of paragraphs 1 – 13 of DGCS's Counterclaims above, as if fully set forth herein.

15. Admitted.

16. Denied.

17. Actus admits that an actual and justiciable controversy exists between Actus and DGCS. Actus denies all allegations not expressly admitted.

FIFTH COUNTERCLAIM
(Declaratory Judgment of Invalidity of U.S. Patent No. 7,328,189)

18. Actus restates and incorporates by reference each of its responses to the allegations of paragraphs 1 – 17 of DGCS’s Counterclaims above, as if fully set forth herein.

19. Admitted.

20. Denied.

21. Actus admits that an actual and justiciable controversy exists between Actus and DGCS. Actus denies all allegations not expressly admitted.

SIXTH COUNTERCLAIM
(Declaratory Judgment of Invalidity of U.S. Patent No. 7,177,838)

22. Actus restates and incorporates by reference each of its responses to the allegations of paragraphs 1 – 21 of DGCS’s Counterclaims above, as if fully set forth herein.

23. Admitted.

24. Denied.

25. Actus admits that an actual and justiciable controversy exists between Actus and DGCS. Actus denies all allegations not expressly admitted.

RESPONSE TO PRAYER FOR RELIEF IN
DGCS’S COUNTERCLAIMS

Actus denies that DGCS is entitled to any of the relief requested in its Prayer.

PRAYER FOR RELIEF

In addition to the relief requested in its Second Amended Complaint, Actus respectfully requests a judgment against DGCS as follows:

- A. That DGCS take nothing by its Counterclaims;
- B. That the Court award Actus all costs and attorneys' fees incurred in defending against DGCS's Counterclaims; and
- C. Any and all further relief that the Court deems just and proper.

Dated: September 9, 2009

Respectfully submitted,

/s/ William E. Davis, III
William E. Davis, III
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, the foregoing was served on all counsel of record who have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d), all others not deemed to have consented to electronic service were served with a true and correct copy of the foregoing via email on this 9th day of September, 2009.

/s/ William E. Davis, III
William E. Davis, III